

Assembly Bill No. 685

CHAPTER 177

An act to amend Sections 6742, 10003, 10007, 10008, 10009.5, 10010, 10011, 10012, 10013, 10014, 10015, 10016, 10023, 10024, 10027, 10074, 10080.9, 10082, 10132, 10133.1, 10136, 10137, 10140.5, 10143.5, 10144, 10161.5, 10161.8, 10178, 10179, 10186.2, and 11212 of, and to repeal Section 10017 of, the Business and Professions Code, and to amend Section 31210 of the Corporations Code, relating to real estate.

[Approved by Governor August 25, 2016. Filed with
Secretary of State August 25, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 685, Irwin. Real Estate Law.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and salesmen by the Real Estate Commissioner, the chief officer of the Bureau of Real Estate.

(1) Under existing law, a real estate salesman is a natural person who is licensed and employed by a licensed real estate broker to do specified acts. Under existing law, whenever the word salesman is used in specified provisions of law, it means salesperson. However, existing law authorizes a licensee to refer to the licensed status as real estate salesman, real estate saleswoman, or real estate salesperson.

This bill would rename the licensed status of "real estate salesman" as a "real estate salesperson" and would make numerous conforming changes in this regard. The bill would also recast the provision authorizing a licensee to refer to his or her licensed status as described above.

(2) Under existing law, if the commissioner has cause to believe that a person who does not possess a real estate license is engaged or has engaged in activities for which a real estate license is required, the commissioner or his or her designated representative is authorized to issue a citation to that person. Existing law prohibits a license from being renewed if an unpaid fine remains outstanding or the terms of a citation have not been complied with.

This bill would additionally prohibit a license from being issued under those circumstances.

(3) This bill would make various nonsubstantive changes.

The people of the State of California do enact as follows:

SECTION 1. Section 6742 of the Business and Professions Code is amended to read:

6742. Any person, firm, or corporation holding a license as real estate broker or real estate salesperson, when making appraisals and valuations of real estate properties, while engaged in the business or acting in the capacity of a real estate broker or a real estate salesperson, within the meaning of the Real Estate Law is exempt from registration under the provisions of this chapter.

SEC. 2. Section 10003 of the Business and Professions Code is amended to read:

10003. “Commissioner” means the Real Estate Commissioner.

SEC. 3. Section 10007 of the Business and Professions Code is amended to read:

10007. “Provisions of this part relating to real estate” means the provisions of Chapters 1, 2, 3, and 6 of Part 1.

SEC. 4. Section 10008 of the Business and Professions Code is amended to read:

10008. “Provisions of this part relating to business opportunity regulation” means the provisions of Chapters 1, 2, and 6 of Part 1.

SEC. 5. Section 10009.5 of the Business and Professions Code is amended to read:

10009.5. “Provisions of this part relating to mineral, oil, and gas brokerage” means the provisions of Chapters 1, 2, 6, and 7, of Part 1.

SEC. 6. Section 10010 of the Business and Professions Code is amended to read:

10010. “Provisions of this part relating to hearings” means the provisions of Article 3 of Chapter 2 of Part 1.

SEC. 7. Section 10011 of the Business and Professions Code is amended to read:

10011. “Licensee,” when used without modification, means a person, whether broker or salesperson, licensed under any of the provisions of this part.

SEC. 8. Section 10012 of the Business and Professions Code is amended to read:

10012. “Broker,” when used without modification, means a person licensed as a broker under any of the provisions of this part.

SEC. 9. Section 10013 of the Business and Professions Code is amended to read:

10013. “Salesperson,” when used without modification, means a person licensed as a salesperson under any of the provisions of this part. Whenever the word salesman is used in this division, or in the rules and regulations of the commissioner, it means salesperson. Notwithstanding any other law, a licensee may elect to refer to his or her licensed status as real estate salesman, real estate saleswoman, or real estate salesperson.

SEC. 10. Section 10014 of the Business and Professions Code is amended to read:

10014. “Real estate licensee” means a person, whether broker or salesperson, licensed under Chapter 3 of this part.

SEC. 11. Section 10015 of the Business and Professions Code is amended to read:

10015. “Real estate broker” means a person licensed as a broker under Chapter 3 of this part.

SEC. 12. Section 10016 of the Business and Professions Code is amended to read:

10016. “Real estate salesperson” means a person licensed as a salesperson under Chapter 3 of this part.

SEC. 13. Section 10017 of the Business and Professions Code is repealed.

SEC. 14. Section 10023 of the Business and Professions Code is amended to read:

10023. “Mineral, oil, and gas licensee” means a person licensed under Chapter 7 (commencing with Section 10500) of this part.

SEC. 15. Section 10024 of the Business and Professions Code is amended to read:

10024. “Mineral, oil, and gas broker” means a person licensed as a broker under Chapter 7 of this part.

SEC. 16. Section 10027 of the Business and Professions Code is amended to read:

10027. The term “listing” as used in this part includes, but is not limited to:

(a) The name or a list of the names, of the owners, landlords, exchangers, or lessors, or the location or locations, of property, or of an interest in property, offered for rent, sale, lease, or exchange.

(b) The name, or a list of the names, or the location or locations at which prospective or potential purchasers, buyers, lessees, tenants or exchangers of property may be found or contacted.

(c) An agreement by which a person who is engaged in the business of promoting the sale or lease of business opportunities or real estate agrees to render to an owner or lessee of such property any services, to promote the sale or lease of said property.

(d) An agreement by which a person who is engaged in the business of finding, locating or promoting the sale or lease of business opportunities or real estate, agrees to circularize, notify or refer real estate brokers or salesperson to said property which is offered for sale or lease.

SEC. 17. Section 10074 of the Business and Professions Code is amended to read:

10074. After qualifying as such neither the commissioner nor any of the deputies, clerks, or employees of the department shall be interested in any mineral, oil, or gas business, mineral, oil, or gas brokerage firm, real estate company or any real estate brokerage firm, as director, stockholder, officer, member, agent or employee, or act as a broker or salesperson, or act as a co-partner or agent for any broker or brokers, or salesperson or salespersons.

SEC. 18. Section 10080.9 of the Business and Professions Code is amended to read:

10080.9. (a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a person who does not possess a

real estate license is engaged or has engaged in activities for which a real estate license is required, or that a person who does not possess a prepaid rental listing service license or a real estate broker license is engaged or has engaged in activities for which a license is required pursuant to Section 10167.2, or that a licensee is violating or has violated any provision of this division or any rule or order thereunder, the commissioner or his or her designated representative may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500), which shall be deposited into the Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470). In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the person cited, and the history of previous violations. A citation issued and a fine assessed pursuant to this section, while constituting discipline for a violation of the law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation against and payment of any fine by a licensee shall not be reported as disciplinary action taken by the commissioner.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business activity or activities or an order to suspend all business operations to a person who is engaged in or has engaged in continued or repeated violations of this part. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal penalties.

(c) If, within 30 days from the receipt of the citation or the citation and fine, the person cited fails to notify the commissioner that he or she intends to request a hearing as described in subdivision (d), the citation or the citation and fine shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of any administrative penalty imposed pursuant to subdivision (a) and an order compelling the person cited to comply with the order of the commissioner. The application, which shall include a certified copy of the final order of the commissioner, shall constitute a sufficient showing to warrant issuing the judgment and order.

(f) Failure of any person to comply with the terms of a citation or pay a fine assessed pursuant to this section, within a reasonable period specified

by the commissioner, shall subject that person to disciplinary action by the commissioner. In no event may a license be issued or renewed if an unpaid fine remains outstanding or the terms of a citation have not been complied with.

SEC. 19. Section 10082 of the Business and Professions Code is amended to read:

10082. The commissioner may publish or cause to be published at appropriate intervals a directory or list of licensed brokers and salespersons and may publish therewith such matter as he may deem pertinent to this part and Chapter 1 (commencing with Section 11000) of Part 2. He shall furnish one copy of such directory to each licensed broker upon his request and the payment of an appropriate charge based upon cost of publication. Such directory may contain copies of the Real Estate Law, Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code, and the Rules and Regulations of the Real Estate Commissioner.

SEC. 20. Section 10132 of the Business and Professions Code is amended to read:

10132. A real estate salesperson within the meaning of this part is a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6.

SEC. 21. Section 10133.1 of the Business and Professions Code is amended to read:

10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), and Article 7 (commencing with Section 10240) of this code and Section 1695.13 of the Civil Code do not apply to any of the following:

(1) Any person or employee thereof doing business under any law of this state, any other state, or the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any business of that type.

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), and the fees and disbursements are not shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a finance lender when acting under the authority of that license.

(7) Any cemetery authority as defined by Section 7018 of the Health and Safety Code, that is authorized to do business in this state or its authorized agent.

(8) Any person authorized in writing by a savings institution to act as an agent of that institution, as authorized by Section 6520 of the Financial Code or comparable authority of the Office of the Comptroller of the Currency of the United States Department of the Treasury by its regulations, when acting under the authority of that written authorization.

(9) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person, employee, officer, or agent is acting within the scope of authority granted by that license in connection with a transaction involving the offer, sale, purchase, or exchange of a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, which transaction is subject to any law of this state or the United States regulating the offer or sale of securities.

(10) Any person licensed as a residential mortgage lender or servicer when acting under the authority of that license.

(11) Any organization that has been approved by the United States Department of Housing and Urban Development pursuant to Section 106(a)(1)(iii) of the federal Housing and Urban Development Act of 1968 (12 U.S.C. Sec. 1701x), to provide counseling services, or an employee of such an organization, when those services are provided at no cost to the borrower and are in connection with the modification of the terms of a loan secured directly or collaterally by a lien on residential real property containing four or fewer dwelling units.

(b) Persons described in paragraph (1), (2), or (3), as follows, are exempt from the provisions of subdivisions (d) and (e) of Section 10131 or Section 10131.1 with respect to the collection of payments or performance of services for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property:

(1) The person makes collections on 10 or less of those loans, or in amounts of forty thousand dollars (\$40,000) or less, in any calendar year.

(2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.

(3) An employee of a real estate broker who is acting as the agent of a person described in paragraph (4) of subdivision (b) of Section 10232.4.

For purposes of this subdivision, performance of services does not include soliciting borrowers, lenders, or purchasers for, or negotiating, loans secured directly or collaterally by a lien on real property.

(c) (1) Subdivision (d) of Section 10131 does not apply to an employee of a real estate broker who, on behalf of the broker, assists the broker in meeting the broker's obligations to its customers in residential mortgage loan transactions, as defined in Section 50003 of the Financial Code, where the lender is an institutional lender, as defined in Section 50003 of the Financial Code, provided the employee does not participate in any negotiations occurring between the principals.

(2) A broker shall exercise reasonable supervision and control over the activities of nonlicensed employees acting under this subdivision, and shall comply with Section 10163 for each location where the nonlicensed persons are employed.

This section does not restrict the ability of the commissioner to discipline a broker or corporate broker licensee or its designated officer, or both the corporate broker licensee and its designated officer, for misconduct of a nonlicensed employee acting under this subdivision, or, pursuant to Section 10080, to adopt, amend, or repeal rules or regulations governing the employment or supervision of an employee who is a nonlicensed person as described in this subdivision.

SEC. 22. Section 10136 of the Business and Professions Code is amended to read:

10136. No person engaged in the business or acting in the capacity of a real estate broker or a real estate salesperson within this state shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in this article without alleging and proving that he or she was a duly licensed real estate broker or real estate salesperson at the time the alleged cause of action arose.

SEC. 23. Section 10137 of the Business and Professions Code is amended to read:

10137. It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her, or to employ or compensate, directly or indirectly, any licensee for engaging in any activity for which a mortgage loan originator license endorsement is required, if that licensee does not hold a mortgage loan originator license endorsement; provided, however, that a licensed real estate broker may pay a commission to a broker of another state.

No real estate salesperson shall be employed by or accept compensation for activity requiring a real estate license from any person other than the broker under whom he or she is at the time licensed.

It is unlawful for any licensed real estate salesperson to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he or she is at the time licensed.

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings.

SEC. 24. Section 10140.5 of the Business and Professions Code is amended to read:

10140.5. Each advertisement or other statement which is published by a real estate broker or salesperson offering to assist persons to file applications for the purchase or lease of, or to locate or enter upon, lands owned by the state or federal government shall, when published, indicate the name of the broker for whom it is published and state that the broker is licensed as a real estate broker by the State of California.

SEC. 25. Section 10143.5 of the Business and Professions Code is amended to read:

10143.5. Any real estate broker who assists another or others, or whose real estate salespersons assist another or others, for a compensation, in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government shall report to the commissioner the names and addresses of all persons he or his salespersons have assisted in filing applications for land owned by the state or federal government and the amount of compensation received from such persons. The report shall be filed quarterly within 10 days after the end of each calendar quarter.

SEC. 26. Section 10144 of the Business and Professions Code is amended to read:

10144. The commissioner may prescribe by regulation the information which shall be contained in contracts or other agreements by a real estate broker, or a real estate salesperson, to assist another or others in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government, including, but not limited to, information with regard to the services agreed to be performed and information with regard to the hazards which may prevent the person to be assisted in filing an application with the state or federal government ever receiving any state or federal land under the application.

SEC. 27. Section 10161.5 of the Business and Professions Code is amended to read:

10161.5. When the holder of a real estate broker's or salesperson's license is required to relinquish his or her license to assume an office in local, state, or federal government, he or she may have it reinstated at any time within six months of termination of his or her service in office upon payment of the appropriate renewal fee, and compliance with the provisions of Article 2.5 (commencing with Section 10170) of this chapter, if the relinquished license was issued four or more years prior to his or her application for reinstatement.

SEC. 28. Section 10161.8 of the Business and Professions Code is amended to read:

10161.8. (a) Whenever a real estate salesperson enters the employ of a real estate broker, the broker shall immediately notify the commissioner thereof in writing.

(b) Whenever employment of a real estate salesperson is terminated, the broker shall immediately notify the commissioner thereof in writing.

(c) Whenever a licensee acquires a business address different from the address shown on his or her license he or she shall mark out the former address on the face of the license and type or write the new main office address in ink on the reverse side, and date and initial same.

(d) Whenever a real estate salesperson enters the employ of a new real estate broker he or she shall mark out the name of his or her former broker on the face of the license and type or write the name of the new employing broker in ink on the reverse side, and date and initial same.

SEC. 29. Section 10178 of the Business and Professions Code is amended to read:

10178. When any real estate salesperson is discharged by his or her employer for a violation of any of the provisions of this article prescribing a ground for disciplinary action, a certified written statement of the facts with reference thereto shall be filed forthwith with the commissioner by the employer and if the employer fails to notify the commissioner as required by this section, the commissioner may temporarily suspend or permanently revoke the real estate license of the employer, in accordance with the provisions of this part relating to hearings.

SEC. 30. Section 10179 of the Business and Professions Code is amended to read:

10179. No violation of any of the provisions of this part relating to real estate or of Chapter 1 of Part 2 by any real estate salesperson or employee of any licensed real estate broker shall cause the revocation or suspension of the license of the employer of the salesperson or employee unless it appears upon a hearing by the commissioner that the employer had guilty knowledge of such violation.

SEC. 31. Section 10186.2 of the Business and Professions Code is amended to read:

10186.2. (a) (1) A licensee shall report any of the following to the bureau:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall constitute a cause for discipline.

SEC. 32. Section 11212 of the Business and Professions Code is amended to read:

11212. As used in this chapter, the following definitions apply:

(a) “Accommodation” means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities therein that is designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals, or any unit or berth on a commercial passenger ship, which is included in the offering of a time-share plan.

(b) “Advertisement” means any written, oral, or electronic communication that is directed to or targeted to persons within the state or such a communication made from this state or relating to a time-share plan located in this state and contains a promotion, inducement, or offer to sell a time-share plan, including, but not limited to, brochures, pamphlets, radio and television scripts, electronic media, telephone and direct mail solicitations, and other means of promotion.

(c) “Association” means the organized body consisting of the purchasers of time-share interests in a time-share plan.

(d) “Assessment” means the share of funds required for the payment of common expenses that is assessed from time to time against each purchaser by the managing entity.

(e) “Bureau” means the Bureau of Real Estate.

(f) “Commissioner” means the Real Estate Commissioner.

(g) “Component site” means a specific geographic location where accommodations that are part of a multisite time-share plan are located. Separate phases of a time-share property in a specific geographic location and under common management shall not be deemed a component site.

(h) “Conspicuous type” means either of the following:

(1) Type in upper and lower case letters two point sizes larger than the nearest nonconspicuous type, exclusive of headings, on the page on which it appears but in at least 10-point type.

(2) Conspicuous type may be utilized in contracts for purchase or public permits only where required by law or as authorized by the commissioner.

(i) “Developer” means and includes any person who creates a time-share plan or is in the business of selling time-share interests, other than those employees or agents of the developer who sell time-share interests on the developer’s behalf, or employs agents to do the same, or any person who succeeds to the interest of a developer by sale, lease, assignment, mortgage, or other transfer, but the term includes only those persons who offer time-share interests for disposition in the ordinary course of business.

(j) “Dispose” or “disposition” means a voluntary transfer or assignment of any legal or equitable interest in a time-share plan, other than the transfer, assignment, or release of a security interest.

(k) “Exchange company” means any person owning or operating, or both owning and operating, an exchange program.

(l) “Exchange program” means any method, arrangement, or procedure for the voluntary exchange of time-share interests or other property interests. The term does not include the assignment of the right to use and occupy accommodations to owners of time-share interests within a single site time-share plan. Any method, arrangement, or procedure that otherwise meets this definition in which the purchaser’s total contractual financial obligation exceeds three thousand dollars (\$3,000) per any individual, recurring time-share period, shall be regulated as a time-share plan in accordance with this chapter. For purposes of determining the purchaser’s total contractual financial obligation, amounts to be paid as a result of renewals and options to renew shall be included in the term except for the following: (1) amounts to be paid as a result of any optional renewal that a purchaser, in his or her sole discretion may elect to exercise, (2) amounts to be paid as a result of any automatic renewal in which the purchaser has a right to terminate during the renewal period at any time and receive a pro rata refund for the remaining unexpired renewal term, or (3) amounts to be paid as a result of an automatic renewal in which the purchaser receives a written notice no less than 30 nor more than 90 days prior to the date of renewal informing the purchaser of the right to terminate prior to the date of renewal. Notwithstanding these exceptions, if the contractual financial obligation exceeds three thousand dollars (\$3,000) for any three-year period of any renewal term, amounts to be paid as a result of that renewal shall be included in determining the purchaser’s total contractual financial obligation.

(m) “Incidental benefit” is an accommodation, product, service, discount, or other benefit, other than an exchange program, that is offered to a prospective purchaser of a time-share interest prior to the end of the rescission period set forth in Section 11238, the continuing availability of which for the use and enjoyment of owners of time-share interests in the time-share plan is limited to a term of not more than three years, subject to renewal or extension. The term shall not include an offer of the use of the accommodation, product, service, discount, or other benefit on a free or discounted one-time basis.

(n) “Managing entity” means the person who undertakes the duties, responsibilities, and obligations of the management of a time-share plan.

(o) “Offer” means any inducement, solicitation, or other attempt, whether by marketing, advertisement, oral or written presentation, or any other means, to encourage a person to acquire a time-share interest in a time-share plan, other than as security for an obligation.

(p) “Person” means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, government, governmental subdivision or agency, or other legal entity, or any combination thereof.

(q) “Promotion” means a plan or device, including one involving the possibility of a prospective purchaser receiving a vacation, discount vacation, gift, or prize, used by a developer, or an agent, independent contractor, or employee of any of the same on behalf of the developer, in connection with the offering and sale of time-share interests in a time-share plan.

(r) “Public report” means a preliminary public report, conditional public report, final public report, or other such disclosure document authorized for use in connection with the offering of time-share interests pursuant to this chapter.

(s) “Purchaser” means any person, other than a developer, who by means of a voluntary transfer for consideration acquires a legal or equitable interest in a time-share plan other than as security for an obligation.

(t) “Purchase contract” means a document pursuant to which a developer becomes legally obligated to sell, and a purchaser becomes legally obligated to buy, a time-share interest.

(u) “Reservation system” means the method, arrangement, or procedure by which a purchaser, in order to reserve the use or occupancy of any accommodation of a multisite time-share plan for one or more time-share periods, is required to compete with other purchasers in the same multisite time-share plan, regardless of whether the reservation system is operated and maintained by the multisite time-share plan managing entity, an exchange company, or any other person. If a purchaser is required to use an exchange program as the purchaser’s principal means of obtaining the right to use and occupy accommodations in a multisite time-share plan, that arrangement shall be deemed a reservation system. When an exchange company utilizes a mechanism for the exchange of use of time-share periods among members of an exchange program, that utilization is not a reservation system of a multisite time-share plan.

(v) “Short-term product” means the right to use accommodations on a one-time or recurring basis for a period or periods not to exceed 30 days per stay and for a term of three years or less, and that includes an agreement that all or a portion of the consideration paid by a person for the short-term product will be applied to or credited against the price of a future purchase of a time-share interest or that the cost of a future purchase of a time-share interest will be fixed or locked-in at a specified price.

(w) “Time-share instrument” means one or more documents, by whatever name denominated, creating or governing the operation of a time-share plan and includes the declaration dedicating accommodations to the time-share plan.

(x) “Time-share interest” means and includes either of the following:

(1) A “time-share estate,” which is the right to occupy a time-share property, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof.

(2) A “time-share use,” which is the right to occupy a time-share property, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a time-share property.

(y) “Time-share period” means the period or periods of time when the purchaser of a time-share plan is afforded the opportunity to use the accommodations of a time-share plan.

(z) “Time-share plan” means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means,

whereby a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years. A time-share plan may be either of the following:

(1) A “single site time-share plan,” which is the right to use accommodations at a single time-share property.

(2) A “multisite time-share plan,” which includes either of the following:

(A) A “specific time-share interest,” which is the right to use accommodations at a specific time-share property, together with use rights in accommodations at one or more other component sites created by or acquired through the time-share plan’s reservation system.

(B) A “nonspecific time-share interest,” which is the right to use accommodations at more than one component site created by or acquired through the time-share plan’s reservation system, but including no specific right to use any particular accommodations.

(aa) “Time-share property” means one or more accommodations subject to the same time-share instrument, together with any other property or rights to property appurtenant to those accommodations.

SEC. 33. Section 31210 of the Corporations Code is amended to read:

31210. It is unlawful for any person to effect or attempt to effect a sale of a franchise in this state, except in transactions exempted under Chapter 1 (commencing with Section 31100) of Part 2 of this division, unless such person is: (1) identified in an application or amended application filed with the commissioner pursuant to Part 2 (commencing with Section 31100) of this division, (2) licensed by the Bureau of Real Estate as a real estate broker or real estate salesperson, or (3) licensed by the commissioner as a broker-dealer or agent pursuant to the Corporate Securities Law of 1968.